

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 379 of 1998

in

SPECIAL CIVIL APPLICATION NO 9468 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ABDULHUSSEIN RASULBHAI KAGALWALA

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Appellant
GOVERNMENT PLEADER for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2
MS KJ BRAHMBHATT for Respondent No. 3
MR MIHIR H JOSHI for Respondent No. 4
NOTICE UNSERVED for Respondent No. 5

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 01/05/98

ORAL JUDGEMENT

The appellant herein challenges the order dated 4-7-1997 passed by the learned Single Judge of this Court in Spl.C.A. no.9468/96.

Brief facts that are required to be considered for deciding this appeal are that the appellant was formerly joined as a party in the petition and notice was issued to him but then at the request of the Counsel for the petitioner, he was deleted and thereafter the impugned order was passed. By virtue of that impugned order, the appellant is adversely affected. Besides this a direction was given in following terms:

"The writ of mandamus is hereby issued directing the respondent-Municipality to discharge the statutory function and duties and handover the vacant and peaceful possession of the property allotted to the petitioners under the scheme."

This has given rise to the present appeal.

Heard the learned Advocate for the appellant Mr.K.S. Jhaveri, Mr. M.R. Shah, for respondent no.2, Miss K.J. Brahmbhatt for respondent no.3, Mr. M.H. Joshi for respondent no.4 who has also undertaken to appear for respondent no.5 and learned A.G.P. Miss Parekh.

A number of contentions are raised by all the learned Advocates for the parties. It has been broadly contended on behalf of the appellant and supported by respondents 1, 2 and 3 that the appellant was deleted and thereafter this order is passed which has adversely affected the rights of the parties. On the other hand Mr. Joshi has contended that an attempt is made on behalf of the appellant to dodge the implementation of the Town Planning scheme and an attempt is also made to play another innings of litigation by raising this appeal on the ground that he was not heard when he was very much there in the petition. However, he does not dispute the factum of deletion of appellant before passing of the order.

In view of these facts without entering into larger questions, keeping in light the fact that the appellant was deleted and had no opportunity of having his say in the matter decided on merits, we are of the

view that the appeal needs to be allowed with a direction that the matter be sent back to the learned Single Judge for rehearing after giving opportunity to the appellant to put forward his case. It would also be open to all the other parties to put forward their respective cases. The appeal is accordingly allowed and stands disposed off. No costs.

(C.K.Thakkar,J.)

(A.L.Dave,J.)

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